

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AHLAM Z. MALIKI,	)	
	)	CASE NO. C12-268-MJP-MAT
Plaintiff,	)	
	)	
v.	)	REPORT AND RECOMMENDATION
	)	RE: SOCIAL SECURITY DISABILITY
MICHAEL J. ASTRUE, Commissioner	)	APPEAL
of Social Security,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Ahlam Z. Maliki proceeds through counsel in her appeal of a final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner denied plaintiff's application for Supplemental Security Income (SSI) benefits after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, the Court recommends that this matter be AFFIRMED.

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**FACTS AND PROCEDURAL HISTORY**

Plaintiff was born on XXXX, 1970.<sup>1</sup> She finished high school and attended some college. She previously worked as a teacher in Iran. She has not worked in the United States. (AR 35-36.)

Plaintiff filed an application for SSI benefits on June 30, 2009, alleging disability beginning January 1, 2002. Plaintiff's application was denied at the initial level and on reconsideration. Plaintiff timely requested a hearing.

On May 12, 2011, ALJ Stephanie Martz held a hearing, taking testimony from plaintiff and a vocational expert. (AR 29-50.) On June 21, 2011, the ALJ issued a decision finding plaintiff not disabled. (AR 14-24.)

Plaintiff timely appealed. The Appeals Council denied plaintiff's request for review on December 12, 2011 (AR 1-4), making the ALJ's decision the final decision of the Commissioner. Plaintiff appealed this final decision of the Commissioner to this Court.

**JURISDICTION**

The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

**DISCUSSION**

The Commissioner follows a five-step sequential evaluation process for determining whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must be determined whether the claimant is gainfully employed. The ALJ found plaintiff had not engaged in substantial gainful activity since the alleged onset date. At step two, it must be

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<sup>1</sup> Plaintiff's date of birth is redacted back to the year of birth in accordance with Federal Rule of Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic Case Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United States.

01 determined whether a claimant suffers from a severe impairment. The ALJ found plaintiff's  
02 depressive disorder, posttraumatic stress disorder (PTSD) and asthma severe. Step three asks  
03 whether a claimant's impairments meet or equal a listed impairment. The ALJ found that  
04 plaintiff's impairments did not meet or equal the criteria of a listed impairment. If a claimant's  
05 impairments do not meet or equal a listing, the Commissioner must assess residual functional  
06 capacity (RFC) and determine at step four whether the claimant has demonstrated an inability to  
07 perform past relevant work. The ALJ found plaintiff able to lift and carry fifty pounds  
08 occasionally and twenty-five pounds frequently, able to sit for about six hours in an eight hour  
09 workday, and stand and/or walk about six hours in an eight hour workday. She can  
10 occasionally climb and frequently balance, stoop, kneel, crouch, and crawl. She should avoid  
11 concentrated exposure to extreme cold, flumes [sic], dusts, odors, gases, poor ventilation, and  
12 hazards. She can understand, remember, and perform simple and repetitive tasks. She should  
13 have limited contact with coworkers. She needs a predictable and structured work  
14 environment. With that assessment, the ALJ found plaintiff unable to perform her past  
15 relevant work as an elementary school teacher.

16 If a claimant demonstrates an inability to perform past relevant work, the burden shifts  
17 to the Commissioner to demonstrate at step five that the claimant retains the capacity to make  
18 an adjustment to work that exists in significant levels in the national economy. With the  
19 assistance of a vocational expert, the ALJ found plaintiff capable of performing other jobs, such  
20 as work as a basket filler, assembler, and cannery worker.

21 This Court's review of the ALJ's decision is limited to whether the decision is in  
22 accordance with the law and the findings supported by substantial evidence in the record as a

01 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means  
02 more than a scintilla, but less than a preponderance; it means such relevant evidence as a  
03 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881  
04 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which  
05 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278  
06 F.3d 947, 954 (9th Cir. 2002).

07 Plaintiff argues the ALJ failed to address or consider the opinion of plaintiff's mental  
08 health provider, Arica Keyser, ARNP, and failed to provide a legally sufficient explanation for  
09 the weight given to the opinion of examining physician Dr. Watson Kenderdine. She requests  
10 remand for further administrative proceedings. The Commissioner argues that the ALJ's  
11 decision is supported by substantial evidence and should be affirmed. For the reasons set forth  
12 below, the Court agrees with the Commissioner.

#### 13 Medical Opinion Evidence

14 In general, more weight should be given to the opinion of a treating physician than to a  
15 non-treating physician, and more weight to the opinion of an examining physician than to a  
16 non-examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where not  
17 contradicted by another physician, a treating or examining physician's opinion may be rejected  
18 only for "clear and convincing" reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391,  
19 1396 (9th Cir. 1991)). Where contradicted, a treating or examining physician's opinion may  
20 not be rejected without "specific and legitimate reasons" supported by substantial evidence in  
21 the record for so doing." *Id.* at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir.  
22 1983)). The ALJ may reject physicians' opinions "by setting out a detailed and thorough

01 summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and  
02 making findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes*,  
03 881 F.2d at 751). Rather than merely stating her conclusions, the ALJ “must set forth [her]  
04 own interpretations and explain why they, rather than the doctors’, are correct.” *Id.* (citing  
05 *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)).

06 “The ALJ is responsible for resolving conflicts in the medical record.” *Carmickle v.*  
07 *Comm’r of SSA*, 533 F.3d 1155, 1164 (9th Cir. 2008) (citing *Benton v. Barnhart*, 331 F.3d  
08 1030, 1040 (9th Cir. 2003). *Accord Thomas*, 278 F.3d at 956-57 (“When there is conflicting  
09 medical evidence, the Secretary must determine credibility and resolve the conflict.”) (quoting  
10 *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992)). Less weight may be assigned to the  
11 opinions of “other sources”. *Gomez v. Chater*, 74 F.3d 967, 970 (9th Cir. 1996), 20 C.F.R. §  
12 416.913(d). However, “[s]ince there is a requirement to consider all relevant evidence in an  
13 individual’s case record,” the ALJ’s decision “should reflect the consideration of opinions from  
14 medical sources who are not ‘acceptable medical sources’ and from ‘non-medical sources’ who  
15 have seen the claimant in their professional capacity.” Social Security Ruling (SSR) 06-03p.

16 The ALJ need not discuss each piece of evidence in the record. *Vincent v. Heckler*, 739  
17 F.2d 1393, 1394-95 (9th Cir. 1984). Instead, “she must explain why ‘significant probative  
18 evidence has been rejected.’” *Id.* (quoting *Cotter v. Harris*, 642 F.2d 700, 706 (3d Cir. 1981)).

19 A. Arica Keyser, ARNP

20 Plaintiff argues the ALJ erred by failing to consider the opinion of Arica Keyser, ARNP.  
21 Specifically, plaintiff cites the “Documentation Request for Medical or Disability Condition”  
22 form completed by Ms. Keyser on January 21, 2011, wherein Ms Keyser opined that plaintiff

01 would have “difficulties concentrating and interacting with others due to anxiety symptoms”  
02 and therefore would not be able to work. (AR 419-22.)

03 The Commissioner argues the ALJ did not err in failing to cite this particular opinion of  
04 Ms. Keyser. The Commissioner contends the ALJ’s Decision reflects a consideration of many  
05 of Ms. Keyser’s observations about plaintiff, but Ms. Keyser’s opinion about plaintiff’s  
06 employability was neither significant, nor probative. The Commissioner notes that Ms.  
07 Keyser did not discuss any specific functional limitations, referring only to vague “difficulties”  
08 that plaintiff would experience. (AR 419.) Further, the Commissioner argues Ms. Keyser’s  
09 conclusory opinion addressed an issue reserved for the Commissioner, and was not entitled to  
10 any special weight. 20. C.F.R. § 416.927(d)(2). The Court agrees that, especially with regard  
11 to an “other source” opinion, Ms. Keyser’s opinion was not entitled to any special weight.

12 Nor has plaintiff met her burden of showing the harmfulness of error, if any, in the  
13 ALJ’s failure to specifically cite Ms. Keyser’s opinion. *See Stout v. Commissioner, Soc. Sec.*  
14 *Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006) (recognizing application of harmless error in  
15 Social Security context where a “mistake was nonprejudicial to the claimant or irrelevant to the  
16 ALJ’s ultimate disability conclusion.”) and *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir.  
17 2012) (“[T]he burden of showing that an error is harmful normally falls upon the party  
18 attacking the agency’s determination.”) (quoting *Shinseki v. Sanders*, 556 U.S. 396, 409  
19 (2009)). While the ALJ did not credit the opinion that plaintiff was completely unable to  
20 work, finding plaintiff able to “understand, remember, and perform simple and repetitive  
21 tasks”, she did find plaintiff “should have limited contact with coworkers [and] a predictable  
22 and structured work environment.” (AR 18.) *See, e.g. Turner v. Comm’r*, 613 F.3d 1217, 1223

(9th Cir. 2010) (ALJ did not err in adopting limitations consistent with the opinion of a medical source, although rejecting the source's opinion that claimant is disabled). The Court, therefore, does not find the ALJ erred in the consideration of Ms. Keyser's opinions.

B. Watson Kenderdine, Ph.D.

Plaintiff also assigns error to the ALJ's evaluation of the opinions of Dr. Kenderdine, a state agency examining consultant. (AR 255-63.) The ALJ gave "no weight" to Dr. Kenderdine's opinion:

Dr. Kenderdine evaluated the claimant in April 2009, in connection for the claimant's request for state assistance. Dr. Kenderdine opined that the claimant had PTSD and depression with possible psychotic symptoms. Dr. Kenderdine stated that the claimant was asked to write a sentence in Arabic but was unable to do so and instead wrote a "few nonsensical words". She allegedly needed reminders to bathe. Her thought processes were described as "confused". Dr. Kenderdine assessed multiple marked and severe limitations. Dr. Kenderdine's description of the claimant's functioning is inconsistent with the claimant's treatment records, including the descriptions of her mental health providers, as discussed in detail above. Dr. Kenderdine apparently relied quite heavily on the subjective report of symptoms and limitations provided by the claimant, and seemed to uncritically accept as true most, if not all, of what the claimant reported. Yet, as explained elsewhere in this decision, there exist good reasons for questioning the reliability of the claimant's subjective complaints.

(AR 22, citations to administrative record omitted.)

Plaintiff argues the ALJ's reasons for giving no weight to Dr. Kenderdine's opinions were not legally sufficient. Plaintiff contends the ALJ failed to identify any particular inconsistency between plaintiff's treatment records and Dr. Kenderdine's findings, and disputes the ALJ's assessment of Dr. Kenderdine's opinions as relying "quite heavily" on plaintiff's subjective report.

However, the Court agrees with the Commissioner that the ALJ's reasoning stands up

01 under scrutiny. Since Dr. Kenderdine's opinions as to plaintiff's mental limitations were  
02 contradicted by at least two other psychologists, Dr. Diane Fligstein (AR 331-33) and Dr.  
03 Eisenhower (AR 387), the ALJ was required to provide specific and legitimate reasons for  
04 rejecting the opinions. *Lester*, 81 F.3d at 831.

05 Although plaintiff argues the ALJ did not specifically cite the treatment records found  
06 by the ALJ to be inconsistent with Dr. Kenderdine's findings, the ALJ does refer to the contrary  
07 findings of other mental health providers, discussed previously in the decision. (AR 22.)  
08 That discussion provides multiple examples contradictory to Dr. Kenderdine's observations  
09 and findings. For example, Dr. Kenderdine's statements that plaintiff was unable to write a  
10 sentence in Arabic (her native language) but instead "wrote a few nonsensical words", and  
11 exhibited a "somewhat confused" thought process (AR 257) was inconsistent with treatment  
12 notes from Sheila Bartlett, MA, MHP (specifically referenced by the ALJ (AR 20)) assessing  
13 plaintiff as having an affect that was "bright, laughing and joking appropriately", "very  
14 engaged and talkative, thoughts clear and linear", and Ms. Bartlett's notation that plaintiff's  
15 "attitude is positive except when talking about going to work. Energy is good, she is talkative,  
16 open and engaging." (AR 362, 429.) Dr. Kenderdine's observation that plaintiff "needs to be  
17 reminded to shower and bathe" (AR 257) was inconsistent with Ms. Bartlett's observation that  
18 plaintiff was "always clean and neatly dressed in traditional robe and silk head scarf." (AR  
19 361.)

20 A reviewing court may permissibly draw inferences from the ALJ's findings.  
21 *Magallanes*, 881 F.2d at 755. *See also Molina*, 674 F.3d at 1121 ("Even when an agency  
22 'explains its decision with "less than ideal clarity,"' we must uphold it 'if the agency's path may



reasonably be discerned.’’)) (quoting *Alaska Dep’t of Env’tl. Conservation v. EPA*, 540 U.S. 461, 497 (2004) (quoting *Bowman Transp., Inc. v. Arkansas-Best Freight Sys.*, 419 U.S. 281, 286 (1974))). Substantial evidence supports the ALJ’s assessment of Dr. Kenderdine’s opinion as inconsistent with plaintiff’s treatment records.

The Court also finds substantial evidence support for the ALJ’s finding that Dr. Kenderdine’s opinion relied “quite heavily” on plaintiff’s subjective reports of symptoms and limitations and, therefore, was entitled to less weight. The assessment form specifically calls for the evaluator to list “Impairments/symptoms claimed by individual”. (AR 255, emphasis added.) Dr. Kenderdine’s account of plaintiff’s “relevant medical history” is clearly taken directly from her. (AR 255, 257 (“He [sic] [complains of] flashbacks, nightmares, confusion and memory problems; unable to recall the birthdays of his children. ... He[sic] does express confusion about performing basis self care and states that he needs to be reminded.”; “He[sic] has a current WSDL but states he frequently get lost and confused. He needs to be reminded to shower and bathe.”))<sup>2</sup>

The ALJ may permissibly reject an opinion based largely on the discredited subjective complaints of the plaintiff. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). Plaintiff does not assign error to the ALJ’s evaluation of the credibility of her subjective symptoms. The Court does not find error in the ALJ’s assessment of the opinion of Dr. Kenderdine.

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<sup>2</sup> The ALJ notes Dr. Kenderdine’s use of the male pronoun when referring to plaintiff, but assumes the error to be typographical. (AR 22.)

**CONCLUSION**

For the reasons set forth above, the decision of the ALJ should be AFFIRMED.

DATED this 30th day of October, 2012.

A handwritten signature in black ink, appearing to read "Mary Alice Theiler", written over a horizontal line.

Mary Alice Theiler  
United States Magistrate Judge